

WHM PET GROUP LIMITED
TERMS AND CONDITIONS OF SALE (2022 EDITION)

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.7.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

FCLS: means a full container or a full truckload of the Goods.

Deliverables: the deliverables (if any) set out in the Order Confirmation produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 16.

Goods: the goods (or any part of them) set out in the Order Confirmation.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, whether given to the Supplier in person, in writing or verbally.

Order Confirmation: the written confirmation of Order issued by the Supplier, whether by post, email or other means.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: WHM Pet Group Limited, registered in England and Wales with company number 02380152.

Supplier Materials: has the meaning given in clause 8.1(h).

1.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to writing or written includes fax and email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues an Order Confirmation to the Customer, at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (whether in the Order or otherwise), or which are implied by law, trade custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any quotation given by the Supplier shall not constitute an offer, and (unless otherwise stated in writing by the Supplier) is valid for a period of 5 Business Days only from its date of issue, but may be varied, withdrawn or cancelled by the Supplier at any time.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery of Goods

4.1 The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 Unless it is expressly agreed in writing that the Customer shall collect the Goods from the Supplier's premises, the Supplier (or its delivery agents) shall deliver the Goods to the location and in the manner set out in the Order Confirmation or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready. Delivery of the Goods shall be completed on arrival at the Delivery Location. Where the Goods is to be collected by the Customer (or its agents) from the Supplier's premises, the Delivery Location shall be the Supplier's own address.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice.

4.9 The Customer acknowledges that the weight of certain Goods may be affected by environmental conditions (which may include suffering evaporation) during transit, and therefore any weight for such Goods given by the Supplier is approximate only and may be subject to variation (generally +/- 1% from that stated).

4.10 Orders accepted by the Supplier are in all cases subject to availability of the Goods to the Supplier. The Customer acknowledges that at the time of acceptance the Supplier may not be able to guarantee the availability of the Goods on the date(s) required by Customer. In the event that the Supplier has insufficient supplies of the Goods, the Supplier shall not be under any obligation to purchase further goods from alternative sources

- of supply and the Supplier shall be entitled to allocate its available supplies as the Supplier in its absolute discretion deems fit and, where the Customer has already paid for the Goods, refund Customer the price of any Goods the Supplier is unable to supply. The Supplier shall have no further liability to Customer in respect of Goods not supplied.
- 4.11 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.12 The Customer is responsible for taking all reasonable steps and for complying with all appropriate safety protocols when opening and unloading containers used to transport Goods, in line with safe and prudent operating practices (including any specific directions/instructions provided by the Supplier or its delivery agents/subcontractors) to ensure, so far as is reasonably practicable, risk of injury is
- 5. Quality of Goods**
- 5.1 The Supplier warrants that on delivery the Goods shall:
- conform in all material respects with the Goods Specification; and
 - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Any complaint from the Customer that some or all of the Goods do not comply with the warranty set out in clause 5.1 (or otherwise do not comply with the Contract, including in the event of damage in transit or a shortfall in quantity of the Goods delivered) shall be dealt with as follows:
- where such non-compliance is apparent on reasonable inspection, the Customer must endorse the delivery note/Proof of Delivery form (signed by the driver) with an appropriate note of such non-compliance (for example 'DAMAGED' or 'SHORTED'), and also notify the Supplier's named representative by email within 3 Business Days of delivery of Goods (or within such other period after delivery as may have been agreed in writing between the parties) to the Customer with appropriate photographic evidence of the non-compliance where appropriate, and comply with any additional requirements specified by the Supplier strictly in accordance with the Supplier's Returns Procedures accessible on the Supplier's website at www.marriages.co.uk; or
 - where such non-compliance is not apparent on reasonable inspection, the Customer shall notify the Supplier's named representative by email within 3 Business Days of discovery of the non-compliance (which notification must be provided within the shelf life of those Goods), strictly in accordance with the Supplier's Returns Procedures accessible on the Supplier's website at www.marriages.co.uk; and
 - the Supplier must be given appropriate photographic evidence of non-compliance of Goods (where such non-compliance is visible) and a reasonable opportunity of examining such Goods, and, if requested by the Supplier and it is reasonably practicable to do, the Customer must return such Goods to the Supplier's place of business (using the same carrier where possible). If the Customer is unable to return Goods using the same carrier, or the return of the Goods is not reasonably practicable, the Goods must be held by the Customer in a condition which causes no further loss or damage to them for collection and examination by the Supplier if required.
- 5.3 FCLS: Any complaint from the Customer that some or all of the Goods concerning the quality, condition or quantity of any FCLS (namely any full container or any full truckload of the Goods) must be notified by the Customer strictly in accordance with the Supplier's Returns Procedures accessible on the Supplier's website at www.marriages.co.uk in order for the Supplier to arrange a survey of the FCLS. The Customer must cease unloading the Goods, retain the container seal and handle the Goods in accordance with the instructions of the Supplier. The Customer must also endorse the delivery note/Proof of Delivery form (signed by the driver) with an appropriate note of such non-compliance (for example 'DAMAGED'), and notify the Supplier's named representative by email within 3 Business Days of delivery of Goods (or within such other period after delivery as may have been agreed in writing between the parties) to the Customer with appropriate photographic evidence of the non-compliance, and comply with any additional requirements specified by the Supplier.
- 5.4 If the Customer endorses the delivery note/Proof of Delivery form "unchecked", the Goods will be presumed to have been delivered in accordance with the Contract unless the Customer notifies the Supplier to the contrary in accordance with clause 5.2 or 5.3.
- 5.5 Where a complaint is notified to the Supplier in accordance with this clause 5 and is accepted, then subject to clause 5.6 the Supplier shall at its option, replace the defective Goods or refund/credit the price of the defective Goods in full or the amount of the shortfall in delivery.
- 5.6 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2 or 5.3;
 - the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - the defect arises as a result of the Supplier following any instructions, drawing, design or Goods Specification supplied by the Customer;
 - the Customer alters such Goods without the written consent of the Supplier;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions after delivery; or
- the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.7 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.8 These Conditions shall apply to any replacement Goods supplied by the Supplier.
- 5.9 Notwithstanding clause 5.1, where Goods are to be supplied or distributed into areas/countries outside the United Kingdom, the Supplier gives no warranty (and it is the responsibility of the Customer to ensure) that Goods supplied meet relevant legislative requirements and other standards applicable to such areas/countries.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery or collection (as the case may be).
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due (in which case title to the Goods shall pass at the time of payment of all such sums); and
 - the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - store and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d); and
 - give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - the Goods; and
 - the ongoing financial position of the Customer.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- it does so as principal and not as the Supplier's agent; and
 - title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, the Supplier may:
- by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Supply of Services**
- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services agreed in writing between the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. Customer's obligations**
- 8.1 The Customer shall:
- ensure that the terms of the Order Confirmation and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
 - co-operate with the Supplier in all matters relating to the Services;
 - provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (where appropriate) prepare the Customer's premises for the supply of the Services;
 - obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - comply with all applicable laws, including health and safety laws;

- (h) keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 9. Charges and payment**
- 9.1 The price for Goods:
- (a) shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 9.2 The charges for Services shall be calculated on a time and materials basis:
- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in its current price list at the date of the Contract (subject to any rates agreed in writing by the Supplier with the Customer);
- (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.3 The Customer will also be responsible for paying any other amounts specified in the Order Confirmation when it pays for the Goods/Services.
- 9.4 The Supplier reserves the right to:
- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 9.5 Unless otherwise agreed in writing by the Supplier, payment in full of the Supplier's pro forma invoice for Goods and Services must be made prior to supply. Where the Supplier has agreed to provide the Customer with a credit account (and the Customer's credit limit is or will not be exceeded) the Customer shall pay each invoice submitted by the Supplier:
- (a) within 28 days of the date of the invoice (or in accordance with any other credit terms agreed by the Supplier and confirmed in writing to the Customer); and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 9.6 Save where the Supplier has issued a pro forma invoice (as anticipated in clause 9.5), in respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services or weekly/monthly in arrears, at the discretion of the Supplier.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time, any similar sales tax or any tax that replaces such sales taxes (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the Customer shall increase the sum it pays to the Supplier by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 9.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (*Termination*), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10. Intellectual property rights**
- 10.1 The Customer acknowledges that:
- (a) the Intellectual Property Rights in the Goods and Services are the Supplier's (or its licensor's) property (other than Intellectual Property Rights in any materials provided by the Customer);
- (b) nothing in the Contract shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights referred to in clause 10.1(a). The Supplier asserts its full rights to control the use of its trade marks within the EEA; and
- (c) any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of the Supplier or any other owner of the trade marks from time to time.
- 10.2 The Customer shall not repackage the Goods or Deliverables and/or remove any copyright notices, confidential or proprietary legends or identification from them (save for any removal which is a necessary result of a manufacturing process of which the Supplier has been previously notified in writing by the Customer).
- 10.3 The Customer shall not use (other than pursuant to the Contract) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Supplier or any associated company of the Supplier owns or claims rights in anywhere in the world.
- 10.4 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business. The Customer shall not sub-license, assign or otherwise transfer the rights granted by this clause.
- 10.5 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 10.6 If at any time it is alleged that the Goods infringe the rights of any third party or if, in the Supplier' reasonable opinion, such an allegation is likely to be made, the Supplier may at its option and its own cost:
- (a) modify or replace the Goods in order to avoid the infringement; or
- (b) procure for the Customer the right to continue using the Goods; or
- (c) repurchase the Goods at the price paid by the Customer.
- 10.7 The Customer shall promptly and fully notify the Supplier of:
- (a) any actual, threatened or suspected infringement of any Intellectual Property Rights in the Goods or Services which comes to the Customer's notice; and
- (b) any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Goods or Services infringes the rights of any person.
- 10.8 The Customer agrees (at the Supplier' request and expense) to do all such things as may be reasonably required to assist the Supplier in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 10.7.
- 10.9 In the event of any claim, proceeding or suit by a third party against the Customer alleging an infringement of any Intellectual Property Right connected with the in the Goods or Services, the Supplier shall defend the Customer at the Supplier' expense, subject to:
- (a) the Customer promptly notifying the Supplier in writing of any such claim, proceeding or suit; and
- (b) the Supplier being given sole control of the defence of the claim, proceeding or suit,
- and provided that the Supplier shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except the Supplier or its authorised representative, or out of use or combination of the Goods or Services with products or third party materials not specified or expressly approved in advance in writing by the Supplier, or where the claim, proceeding or suit arises from the Supplier' adherence to the Customer's requested changes to the Goods Specification or Service Specification or from infringing items of the Customer's origin, design or selection.

11. Data protection

11.1 The following definitions apply in this clause clause 11:

- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
 - (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
 - (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 11.4 Without prejudice to the generality of clause clause 11.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
- 11.5 Without prejudice to the generality of clause clause 11.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause clause 11.
- 11.6 The Customer consents to the Supplier appointing third-party processors of Personal Data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement reflecting the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause clause 11.6.
- 11.7 Either party may, at any time on not less than 30 days' notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information

Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause clause 12; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- ### 13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.
- 13.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 13.2 The restrictions on liability in this clause clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (d) defective products under the Consumer Protection Act 1987.
- 13.4 Subject to clause clause 13.3, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the total charges in the contract year in which the breaches occurred.
- 13.5 In clause clause 13.4:
- (a) **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
 - (b) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of Goods and Services actually supplied by the Supplier, whether or not invoiced to the Customer.
- 13.6 Subject to clause clause 13.3, the following types of loss are wholly excluded by the parties:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of production;
 - (d) loss or damage to other goods or property;
 - (e) loss of agreements or contracts;
 - (f) loss of anticipated savings;
 - (g) loss of use or corruption of software, data or information;
 - (h) loss of or damage to goodwill; and
 - (i) indirect or consequential loss.
- 13.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause clause 4.12 and clause clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.8 This clause 13 shall survive termination of the Contract.
- ## 14. Termination
- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

- 14.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 14.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 15. Consequences of termination**
- 15.1 On termination of the Contract:
- the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 16. Force majeure**
- Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.
- 17. Export Terms**
- 17.1 In these Conditions, Incoterms means the Incoterms® Rules published by The International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given in particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and any of these Conditions, the provisions of these Conditions shall prevail.
- 17.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 17 shall (subject to any special terms agreed in writing between the Supplier and the Customer) apply notwithstanding any other provision of these Conditions.
- 17.3 The Customer is responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination. This shall include the Customer obtaining, at its own cost, such import clearances, licences, consents and registrations in relation to the Goods as are required from time to time for entry of the Goods into the Customer's country, and/or their delivery to the Delivery Point. If required by the Supplier (including to release the shipment) the Customer shall make those import clearances, licences, consents and registrations available to the Supplier promptly upon request.
- 17.4 Unless otherwise agreed in writing by the Supplier (including, where appropriate, if the Incoterms rules specified in the Order Confirmation provide otherwise), the Customer is also responsible for the remittance and payment of any customs, clearance charges, taxes, broker's fees and other duties, tariffs and other amounts payable in connection with the importation of the Goods into the Customer's country, or their delivery to the Customer.
- 17.5 The Customer shall be entitled to attend the testing and inspection of the Goods by the Supplier at the Supplier's premises before transportation. The Supplier shall have no liability for any claim made after shipment in respect of any defect in the Goods which would be apparent on inspection before transportation.
- 18. General**
- 18.1 Assignment and other dealings
- The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
 - The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 18.2 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 18.2 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 18.3 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.4 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 18.5 Entire agreement.
- The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
 - Nothing in this clause shall limit or exclude any liability for fraud.
- 18.6 Third party rights.
- Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 18.7 Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18.8 Notices.**
- Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next Business Day delivery service or commercial courier.
 - A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.8(a); if sent by pre-paid first class post or other next Business Day delivery service, at 9:00 am on the two Business Day after posting; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
 - The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
 - A notice given under the Contract is not valid if sent by email or fax.
- 18.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 18.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.